

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No.
	)	09-00035-01-CR-W-NKL
JUAN MARTINEZ-PENA,	)	
	)	
Defendant.	)	

**MEMORANDUM OF MATTERS DISCUSSED AND  
ACTION TAKEN AT PRETRIAL CONFERENCE**

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on July 2, 2009. Defendant Martinez-Pena appeared in person and with appointed counsel Larry Pace. The United States of America appeared by Assistant United States Attorney Patrick Daly and Assistant United States Attorney Mike Warner.

***I. BACKGROUND***

On February 3, 2009, an indictment was returned charging Defendant with one count of conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) , (b)(1)(A), 846, and one count of possession with the intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846.

The following matters were discussed and action taken during the pretrial conference:

***II. TRIAL COUNSEL***

Mr. Daly announced that he and Mr. Warner will be the trial counsel for the government. The case agent to be seated at counsel table is James Morgan, Task Force Officer with the DEA.

Mr. Pace announced that he will be the trial counsel for Defendant Martinez-Pena. Ron Ninemire, Investigator, will assist at trial.

***III. OUTSTANDING MOTIONS***

There are no pending motions in this case.

***IV. TRIAL WITNESSES***

Mr. Daly announced that the government intends to call 8-10 witnesses without stipulations or 6-8 witnesses with stipulations during the trial.

Mr. Pace announced that Defendant Martinez-Pena intends to call 2 witnesses during the trial. Defendant may testify.

***V. TRIAL EXHIBITS***

Mr. Daly announced that the government will offer approximately 58 exhibits in evidence during the trial.

Mr. Pace announced that Defendant Martinez-Pena will not offer any exhibits in evidence during the trial.

***VI. DEFENSES***

Mr. Pace announced that Defendant Martinez-Pena will rely on the defense of general denial.

***VII. POSSIBLE DISPOSITION***

Mr. Pace stated this case is definitely for trial.

***VIII. STIPULATIONS***

Stipulations are likely as to chain of custody and chemists' reports.

***IX. TRIAL TIME***

Counsel were in agreement that this case will take 2 days to try.

**X. EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS**

The U. S. Magistrate Judge ordered:

That, in addition to the requirements of the Stipulations and Orders filed March 2, 2009, counsel for each party file and serve a list of exhibits he intends to offer in evidence at the trial of this case on the form entitled Exhibit Index and have all available exhibits premarked using the stickers provided by the Clerk of Court by July 2, 2009;

That counsel for each party file and serve requested jury voir dire examination questions by or before noon, Wednesday, July 15, 2009;

That counsel for each party file and serve, in accordance with the requirements of Local Rule 51.1, requested jury instructions<sup>1</sup> by or before noon, Wednesday, July 15, 2009. Counsel are requested to provide proposed jury instructions in both hard copy form, as required by Local Rule 51.1, and by e-mail to the trial judge's courtroom deputy.

**XI. UNUSUAL QUESTIONS OF LAW**

Motions in limine on the following issues will probably be filed: Defendant's cross-examination of government witnesses and hearsay statements. There are no unusual questions of law.

**XII. TRIAL SETTING**

All counsel and Defendant were informed that this case will be listed for trial on the joint criminal jury trial docket which commences on July 20, 2009. A Spanish-speaking interpreter is required. The defense asks for the first week of the trial docket due to conflicts with trials the second week.

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<sup>1</sup>Counsel in all cases assigned to be tried before Chief Judge Fernando Gaitan, Jr., as reflected in the trial letter which is prepared by Judge James England, shall meet and prepare a packet of agreed proposed jury instructions to be submitted to Judge Gaitan and e-mailed to marylynn\_shawver@mow.uscourts.gov and rhonda\_enss@mow.uscourts.gov by July 17, 2009. To the extent there are disagreements to certain instructions, each attorney shall tab and submit his or her preference on those instructions. The instructions shall be listed in the order they are to be given.

/s/ Robert E. Larsen  
ROBERT E. LARSEN  
United States Magistrate Judge

Kansas City, Missouri  
July 2, 2009

cc: The Honorable Nanette K. Laughrey  
Mr. Patrick Daly  
Mr. Larry Pace  
Mr. Jeff Burkholder